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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. KEYVAN NOVINBAKHT, Defendant and Appellant.	B208231 (Los Angeles County Super. Ct. No. SA057026)

APPEAL from an order of the Superior Court of Los Angeles County, Elden S. Fox, Judge. Affirmed.

Roger Jon Diamond for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, and Brian T. Chu, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Keyvan Novinbakht appeals from an order denying his motion to vacate forfeiture of cash bail in the amount of $500,000 deposited on behalf of his nephew, Bardia Elyasi, who failed to appear as ordered by the trial court. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 10, 2005, appellant deposited $500,000 cash bail with the Los Angeles County Superior Court to allow the release from custody of Bardia Elyasi (Elyasi), a defendant charged with assault and attempted murder in a pending criminal case.

On January 31, 2007, Elyasi failed to appear for a pretrial and trial setting conference in the Beverly Hills branch courthouse. Superior Court Judge Craig Karlan ordered bail forfeited and a bench warrant. Judge Karlan stated: "As for Mr. Elyasi, bench warrant will issue $1 million. Bond will be forfeited. Anything else?"

On February 6, 2007, a notice of forfeiture of cash bail was prepared and mailed to appellant according to the testimony of Superior Court Deputy Clerk Sarojini Sarah Balasingham (Balasingham).

On April 12, 2007, appellant filed a motion to set aside the bail forfeiture and exonerate the bail. Appellant contended that the notice of forfeiture was not mailed to him until March 13, 2007. The People filed opposition to the motion, contending that two forfeiture notices were sent to appellant, the first on February 6, 2007 (within the statutory 30 days from the date of the forfeiture, as required by Penal Code section 1305, subdivision (b)(1)[1]), and the second on March 13, 2007 (beyond the 30 days required by statute).

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1 All statutory references are to the Penal Code, unless otherwise noted.

On May 18, 2007, the motion was taken off calendar. Appellant filed another motion to set aside the bail forfeiture and exonerate bail on June 27, 2007. In his declaration, he denied receiving more than one forfeiture notice and asserted under penalty of perjury that he only received the notice that was mailed on March 13, 2007.

On August 9, 2007, the trial court conducted an evidentiary hearing on the motion to set aside the forfeiture. Balasingham testified as to the forfeiture of the cash bail.

Balasingham testified that she had worked for the superior court for over 33 years, the last three years as a bond clerk and the last nine months as a forfeiture clerk. She works on cash bails whenever they are received by the bond unit.

Balasingham stated that she received a printed bail forfeiture notice on her computer printer. Because it was a cash bail posted by a third party depositor, she called the Beverly Hills branch court to have a copy of the depositor's (appellant's) information faxed to her to verify that the depositor's information was the same as that printed on the notice. She did not see any documents informing her that a bail forfeiture notice had already been sent by the branch court. She stamped a mailing date on the notice and personally deposited it on February 6, 2007, at the mailbox located at Temple and Spring Streets.

The bail forfeiture notice was addressed to appellant and indicated the date of the forfeiture order was January 31, 2007. The notice contained a Clerk's Certificate of Service.

The date "01/31/07" on the notice was scratched out and the date "Feb 06 2007" stamped below the scratched date. The name "Keyvan Novinbakht" and address "325 N. Oakhurst Dr. #305 Beverly Hills CA 90210" appeared at the bottom. The fact of the mailing was entered in the court's docket of minute orders.

Balasingham indicated that her normal custom and practice is to mail the notice of forfeiture within five days, but in this particular case she did it on the sixth day because she had to wait for information supplied by the Beverly Hills court.

After Balasingham testified, the trial court granted an extension on the bail forfeiture and continued the matter for further hearing.

On September 20, 2007, the bail forfeiture hearing reconvened, with appellant testifying. According to appellant, his sister told him on March 14, 2007 that she had received a letter informing her that the cash bail was going to be forfeited. When appellant went home, he received a copy of the same letter that had a postmark on the envelope of March 13, 2007. Appellant again stated that he received no other documents. The People and the trial court agreed that the notices mailed by the Beverly Hills court were untimely.

The trial court identified the issue as whether the bail forfeiture notice printed at the downtown office of the superior court was mailed as purported by Balasingham. It found the following:

"The bond clerk from downtown as noted has the responsibility of securing the proper notice in this case. It's clear from my review of the minute orders in this case that the clerks in Department 2 [branch court] did a process or procedure that was unauthorized. Although at this point it does not appear in any way to diminish the notice that was required to have been prepared and mailed. [¶] As to whether Mr. Novinbakht actually received it or not, you know, as I've indicated, that's a question that I think ultimately would have to be determined in another arena, not this arena because I'm not here to indicate that Mr. Novinbakht is being other than candid in terms of what he believes he received or not. [¶] The issue in this case is whether the notice was mailed. I am satisfied that the notice was mailed in this case as required and according to superior court policy, and that was generated from downtown from the bond clerks office. And the notices here are irrelevant to the issue as to the forfeiture."

After the court granted an extension of time for forfeiture, on April 21, 2008, the trial court ordered the forfeited cash bail transferred to the county treasurer.

DISCUSSION

A. *Standard of Review*

The trial court's ruling on a motion to set aside a bail forfeiture is subject to the deferential abuse of discretion standard and will not be disturbed unless a clear abuse of discretion appears in the record. (*People v. Ranger Ins. Co.* (2005) 135 Cal.App.4th 820, 823; *People v. Bankers Ins. Co.* (2009) 171 Cal.App.4th 1529, 1532.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

Appellant contends that the forfeiture must be set aside because the strict procedures mandated by section 1305, subdivision (b), were not followed. We disagree.

Section 1305, subdivision (a), provides that a court shall in open court declare a forfeiture of the money deposited as bail if the defendant fails to appear for a required court appearance without sufficient excuse. Section 1305, subdivision (b), provides in pertinent part: "[T]he clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. . . . The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. . . . [¶] . . . [¶] The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply: [¶] (1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture. [¶] (2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond."

Because the law disfavors forfeitures and statutes imposing them, the bail bond forfeiture statutes are strictly construed in favor of the surety to avoid harsh results. (*People v. International Fidelity Ins. Co.* (2001) 92 Cal.App.4th 470, 473, disapproved on another ground in *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 663, fn. 7.) The appellate courts are not to decide the bond forfeiture cases by

looking at potential revenue to the government or punishment to the individual or entity providing the bond. (*People v. Lexington National Ins. Co.* (2007) 147 Cal.App.4th 1192, 1197.)

B. *Denial of Motion to Vacate Bail Forfeiture*

1. Alleged Errors in the Actions of Judge Karlan

Appellant cites two errors in the action taken by Judge Karlan when dealing with the bail. First, appellant alleges that it was error to use the word "will" instead of "is" in declaring the bail forfeited. Second, appellant also maintains that it was error to use the word "bond" when there was a cash bail posted. We find no basis for reversal based upon these claims of error.

While we agree that the bail forfeiture statutes are to be strictly construed in favor of the surety or the third person who posts a cash bail, the argument that the forfeiture was invalid because of the use of "will" instead of "is" is not persuasive. There certainly could be no ambiguity when looking at his sentence as a whole. He stated, "Bond will be forfeited" and issued a warrant for the arrest of Elyasi. This was done orally in open court. While it also is true that Judge Karlan incorrectly used the word "bond," it does not affect the ultimate outcome or vitiate the strict requirements of section 1305, subdivision (b).

People v. National Automobile & Casualty Ins. Co. (2002) 98 Cal.App.4th 277, relied on by appellant, is clearly distinguishable. In *National*, the surety posted a $50,000 bond for the release of the defendant. The defendant later failed to appear and the court stated on the record, "bail status is revoked." (*Id*. at pp. 280-281, italics omitted.) The court did not also order a forfeiture of the bail on the record. After being questioned by the clerk off the record and confirming that the bail had been forfeited, the clerk prepared a minute order stating, "Bail ordered forfeited." (*Id*. at p. 281.) In determining whether the forfeiture was proper, we stated: "The plain language of the amended statute indicates in order for bail to be forfeited a trial court must (1) make a declaration of forfeiture stating 'bail is forfeited' (2) on the record while court is in session. The

Legislature's use of the word 'shall' signifies this dual requirement is mandatory." (*Id.* at p. 283, fn. omitted.) Since the lower court failed to comply with the statutory mandate, we concluded that the court lost jurisdiction to declare a forfeiture. (*Id*. at p. 290.)

In the instant case, however, the trial court stated *on the record* that the bail will be forfeited. It is very clear that this was sufficient to forfeit the cash bail posted by defendant.

2. Execution of Clerk's Certificate of Service

Appellant contends that the "clerk" referred to in section 1305, subdivision (b), must be the clerk of the court where the case is pending, to wit, West Branch of the Superior Court located in Beverly Hills, and this is the clerk who must mail the notice. Appellant also maintains that the clerk's certificate of service on the February 6, 2007 notice was defective because it did not state the location at which Balasingham signed it and did not state that it was signed under penalty of perjury. We disagree.

California Rules of Court, rule 2.3(1) states that "'Court' means the superior court." The clerk's certificate of service on the February 6, 2007 bail forfeiture notice stated, "I am the clerk of the above named court and not a party to this cause." In *American Contractors Indemnity Co. v. County of Orange* (2005) 130 Cal.App.4th 579, 583, footnote 4, the notice of forfeiture was signed by the clerk of the Superior Court of Orange County and stamped with the deputy clerk's name. This was determined to be sufficient.

The clerk's certificate of service satisfied the requirements for mailing found in Code of Civil Procedure section 1013a, subdivision (4). The code section states in pertinent part: "In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon

fully prepaid. This form of proof is sufficient for service of process in which the clerk or deputy clerk signing the certificate places the document for collection and mailing on the date shown thereon, so as to cause it to be mailed in an envelope so sealed and so addressed on that date following standard court practices."

The clerk's certificate of service with the bail forfeiture notice stated: "I am the clerk of the above named court and not a party to this cause. That on this date I served the above clerk's notice of forfeiture by placing a true copy of this notice in an envelope(s) as addressed below, at the address shown by the records of this court and then by sealing said envelope(s) and depositing same with postage full prepaid thereon in the United States mail at Los Angeles County, California. [¶] I declare under penalty of perjury the foregoing is true and correct." This complied with Code of Civil Procedure section 1013a, subdivision (4).

Appellant also misconstrues *American Contractors Indemnity Co.* as requiring that the certificate of service must indicate the location from which the notice was mailed. The Court of Appeal found that the "court clerk's declaration of service by mail does not include [the] addresses [of the surety and its agent] as required by [Code of Civil Procedure] section 1013a, subdivision (4). The court clerk's declaration of service by mail must include the surety's and bail agent's addresses." (*American Contractors Indemnity Co. v. County of Orange*, *supra*, 130 Cal.App.4th at p. 583, fns. omitted.) The opinion does not state that the place in which the court clerk deposits the mail must be included in the clerk's certificate of service.

3. Location of Certificate of Mailing

Appellant suggests that there was noncompliance with section 1305, subdivision (b), because the certificate of mailing was not placed in the court's file at the branch court. We do not find this contention persuasive.

Section 1305, subdivision (b), states that the clerk "shall place the certificate in the court's file." As indicated previously, "court" means superior court and not necessarily a

branch court of the superior court. (See Cal. Rules of Court, rule 2.3(1).) Thus, "the court" mentioned in the statute cannot be read to mean the branch court.

The fact that the certificate of service could not be found in the court's file by appellant's investigator does not affect the validity of service. The court's computer docket of minute orders established that on February 6, 2007, the notice was mailed. This is substantiated by Balasingham's testimony that she mailed the notice personally on February 6, 2007, the precise date that the court's computer docket indicates that the notice was mailed. Balasingham testified from a review of the computer docket of minute orders, the bail forfeiture notice and her custom and practice. It is presumed that the official duty of a court clerk has been regularly performed. (Evid. Code § 664; *American Contractors Indemnity Co. v. County of Orange, supra,* 130 Cal.App.4th at p. 583.)

4. Notice to Appellant

Appellant argues that he did not receive the February 6, 2007 notice of forfeiture. Therefore, he contends, the bond forfeiture should be set aside based on his failure to receive notice and the trial court's failure to make a finding that he received the notice. We disagree.

Section 1305 does not require that the bail forfeiture be set aside if the person or entity depositing the bail fails to receive notice. We concur that the requirements for finding a bail forfeiture are to be strictly construed, but nothing in the statute requires proof that the depositor actually received the notice. It is certainly appropriate for the trial court to consider evidence from the depositor as to whether notice was sent. Ultimately, the trial court determined that the requirements of section 1305 were complied with and denied appellant's motion to set aside the bail forfeiture. We find no abuse of discretion in its determination. (*Shamblin v. Brattain, supra,* 44 Cal.3d at pp. 478-479.)

DISPOSITION

The order is affirmed. Plaintiff is awarded costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.